

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

JOHN E. MILLER

Defendant

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CRIMINAL ACTION NUMBERS

IN-97-12-0663-R5

ID NO. 9712003463

Submitted: October 25, 2005

Decided: January 5, 2006

MEMORANDUM OPINION

*Upon Motion of Defendant for Postconviction Relief and
Motion for Appointment of Counsel - **DENIED***

HERLIHY, Judge

Defendant John E. Miller has filed his second motion for post-conviction relief.¹ This Court previously denied his first motion.² The Supreme Court affirmed that denial.³ His second motions seeks a determination that he is guilty not of robbery in the first degree but of robbery in the second degree. The expectation is presumably that this will prompt a reduction in his sentence. He bases that unusual request on language from the Court's earlier denial of his first motion for post-conviction relief. His second motion is accompanied with a motion for the appointment of counsel.

Discussion

Before reviewing the substance of Miller's second motion, the Court is required to determine if there are any procedural impediments to doing so.⁴ In this case there are a number of such impediments.

The first one is that this second motion is time barred. Miller pled guilty to robbery in the first degree, and, after a pre-sentence investigation, was sentenced on August 28, 1998. This motion, filed October 14, 2005 is more than three years⁵ since that date and

¹ This motion was initially misdirected to judge who had no connection with this case. Miller has "supplemented" his motion with many letters since, but the substance of his claim has not changed.

² *State v. Miller*, Del.Super., IN-97-12-0663-R1, Herlihy, J. (December 2, 2003).

³ *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003).

⁴ *Maxion v. State*, 686 A.2d 148, 150 (Del. 1996).

⁵ This rule was amended to provide for a one year period in which to file a post-conviction motion applicable to all cases where the judgment of conviction became after the effective date of July 1, 2005.

is barred.⁶ There is no intervening newly recognized right applicable which would provide relief from this bar.⁷

An additional bar is that the issue he raises has been previously adjudicated. Such claims are barred.⁸ The extent of that adjudication is set out in the five pages from this Court's 2002 decision and which are attached to this opinion. Miller argues that portions of that language mean this Court said in 2002 he was innocent of robbery in the first degree. He misconstrues and twists the Court's words. Further, the Supreme Court has, as noted, affirmed that earlier decision. The relief to this bar is to show reconsideration is warranted in the interest of justice.⁹ Miller has not shown that nor does this Court independently find any interest of justice warrants reconsideration. In addition, his current claim is a mere re-packaging of his earlier claim. Then it was under the rubric of ineffective assistance of counsel. Now it is a straight effort to have the Court declare he could only be guilty of robbery second degree.

The Court does not consider re-packaging or re-labeled claims.¹⁰ Miller's current claim is barred because he could have included it in his 2002 motion. He could have made

⁶ Superior Court Criminal Rule 61(i)(1); *State v. Lewis*, 797 A.2d 1198, 2000 (Del. 2000).

⁷ Superior Court Criminal Rule 61(i)(1); *Steckel v. State*, 882 A.2d 168, 171 (Del. 2005).

⁸ Superior Court Criminal Rule 61(i)(4); *Stone v. State*, 690 A.2d 924, 925 (Del. 1996).

⁹ Superior Court Criminal Rule 61(i)(4).

¹⁰ *Riley v. State*, 585 A.2d 719, 721 (Del. 1990); *cert. denied* 501 U.S. 1223, 111 S.Ct. 2840, 115 L.Ed.2d 1008 (1991).

this claim separately from the closely related one of ineffective assistance of counsel. It is manifestly and was manifestly a knowable claim. His failure to include it in 2002 bars consideration of it now, too.¹¹

In sum, the Court sees no interest of justice or any other means for Miller to get relief from all these bars. Because of this disposition, there is no need to appoint counsel to pursue this second postconviction relief motion.

Conclusion

For the reasons stated herein defendant John E. Miller's motion for appointment of counsel and second motion for postconviction relief is **DENIED**.

IT IS SO ORDERED.

J.

¹¹ Superior Court Criminal Rule 61(b)(2); *State v. Simpson*, 1998 WL 735882 at *9 (Del. Super.).